

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: August 5, 2020

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JEAN GENTILE,

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PUBLISHED

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Petitioner,

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No. 16-980V

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v.

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Special Master Nora Beth Dorsey

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Pain and Suffering; Future Pain and

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Suffering; Causation-In-Fact; Influenza

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(“Flu”) Vaccine; Shoulder Injury Related

Respondent.

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to Vaccine Administration (“SIRVA”);

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Out-of-Pocket Expenses

* * * * *

Leah V. Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.

Julia M. Collison, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On August 10, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act” or “the Program”). Petitioner alleges that she suffered a left shoulder injury caused by her October 15, 2015 influenza (“flu”) vaccination. Petition at 1.

On October 29, 2018, the undersigned issued a ruling on entitlement, finding that petitioner was entitled to compensation. Ruling on Entitlement dated Oct. 29, 2018 (ECF No. 46). The parties then attempted to resolve damages informally, but they were unable to do so. A damages hearing was subsequently held on February 26, 2020, in Washington, D.C.

¹ Because this Decision contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On June 5, 2020, the undersigned issued a damages ruling, awarding petitioner of \$85,000.00 for actual pain and suffering, \$500.00 per year for her life expectancy for future pain and suffering, and \$1,199.38 for actual unreimbursable expenses. Damages Ruling dated June 5, 2020 (ECF No. 81). That ruling is incorporated herein as if fully set forth. The undersigned also ordered petitioner to file a joint status report converting the undersigned's award of future pain and suffering to net present value. Id. at 18. On August 4, 2020, respondent informed the Court that the parties' calculated the present value of petitioner's future pain and suffering and agree to an award of \$10,094.83. Respondent's Joint Status Report dated Aug. 5, 2020 (ECF No. 85).

Therefore, based on the record as a whole, and pursuant to the undersigned's damages ruling, the undersigned finds that petitioner is entitled to an award as ordered below:

The undersigned awards a lump sum payment of \$85,000.00 for actual pain and suffering, a lump sum of \$10,094.83 for future pain and suffering, and a lump sum payment of \$1,199.38 for past unreimbursable expenses, for a total of \$96,294.21 in the form of a check payable to petitioner.

These amounts represent compensation for all damages that would be available under § 300aa-15(a). The Clerk of Court is directed to enter judgment in accordance with this decision.

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Special Master